



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R06-OAR-2022-0546; FRL-10189-02-R6]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Arkansas; Control of Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving the CAA section 111(d) state plan submitted by the State of Arkansas for sources subject to the Municipal Solid Waste (MSW) Landfills Emission Guidelines (EG). The Arkansas MSW landfills plan was submitted to fulfill the state's obligations under CAA section 111(d) to implement and enforce the requirements under the MSW Landfills EG. The EPA is approving the state plan and amending the agency regulations in accordance with the requirements of the CAA.

DATES: This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. The incorporation by reference of certain material listed in the rule is approved by the Director of the Federal Register **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. **EPA-R06-OAR-2022-0546**. All documents in the docket are listed on the <https://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information

whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Karolina Ruan Lei, EPA Region 6 Office, Air and Radiation Division - State Planning and Implementation Branch, (214) 665-7346, ruan-lei.karolina@epa.gov. Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID-19. Please call or e-mail the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

The background for this action is discussed in detail in our September 30, 2022 proposal (87 FR 59376) and accompanying Technical Support Document (TSD). In that document we proposed to approve the Arkansas MSW landfills plan submitted by the Arkansas Department of Energy and Environment, Division of Environmental Quality (ADEQ) in accordance with the requirements of section 111(d) of the CAA and to amend 40 CFR part 62, subpart E, to codify EPA’s approval. We proposed to find that the Arkansas MSW landfills plan, submitted by ADEQ on June 20, 2022, and supplemented on August 24, 2022, and August 31, 2022, is at least as protective as the Federal requirements provided under the MSW landfills EG, codified at 40 CFR part 60, subpart Cf.

II. Response to Comments

We received one comment regarding our proposal. The comment and response to the comment are provided below.

Comment: This is part of an assignment to practice using the Regulations.gov website. I chose to comment on this proposed rule because I find environmental justice to be highly important. As stated in the proposed rule, the emissions from landfill waste can be hazardous and detrimental to the health of the community. For this reason, the limiting of these emissions by regulations described in the rule is of the utmost importance. Furthermore, because of the hazardous nature of these emissions, it is crucial that the locations of the landfills are properly considered, so as not to expose a densely populated area, or an area populated largely by minority groups. The figures presented in Table 1 are shocking for many reasons. The relatively high percentiles that most of the landfills noted fall into demonstrate a need for reduction, for the safety of the communities. Furthermore, the discrepancies between different areas' landfills also raises a concern for the health of each individual community, and demonstrates a need for a more equitable approach to environmental justice in Arkansas.

Response: We appreciate the commenter's statements, which provide general support for regulations that reduce landfill emissions as well as the commenter's perspectives regarding environmental justice. However, the commenter's statements regarding the siting of landfills and the need for a more equitable approach to environmental justice in Arkansas are outside the scope of this rulemaking. This final action approving the Arkansas MSW landfills plan concerns the regulation of emissions from existing MSW landfills for which construction, reconstruction, or modification was commenced on or before July 17, 2014. As discussed in the proposed rule, we believe that these requirements for existing MSW landfills and resulting emissions reductions have contributed to reduced environmental and health impacts on all populations impacted by emissions from these sources in Arkansas. Additionally, we would like to clarify that while we did provide additional analysis of environmental justice associated with this action in the proposed rule, this analysis was done for the purpose of providing

additional context and information about this rulemaking to the public, not as a basis of the action. As stated in this final rule and the associated proposed rule, this rule finds that the Arkansas MSW landfills plan is at least as protective as the Federal requirements provided under the MSW landfills EG. EPA is statutorily required to approve CAA section 111(d) plans that meet the Federal criteria for approval. For more information, please see the proposal and the accompanying TSD for the detailed basis and rationale for this action.

III. Final Action

In this final action, the EPA is amending 40 CFR part 62, subpart E, to reflect approval of the Arkansas MSW landfills plan from ADEQ, received on June 20, 2022, and supplemented on August 24, 2022, and August 31, 2022, in accordance with section 111(d) of the CAA.

IV. Environmental Justice Considerations

EPA provided additional analysis of environmental justice associated with this action in our September 30, 2022 proposal (87 FR 59376) for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. These EG requirements implemented under the MSW Landfills Federal Plan and now incorporated by Arkansas in its MSW landfills plan is designed to result in significant emissions reductions for MSW landfills¹. As discussed in the proposed action, we believe that these requirements for existing MSW landfills and resulting emissions reductions have climate benefits and have contributed to reduced environmental and health impacts on all populations impacted by emissions from these sources in Arkansas, including people of color and low-income populations, and will continue to do so under Federal oversight. This rule will not have disproportionately high or adverse human

¹ Described in the MSW landfill EG proposed and final rules (80 FR 52100; 81 FR 59276).

health or environmental effects on communities with environmental justice concerns because it is not anticipated to result in or contribute to emissions increases in Arkansas.

V. Incorporation by Reference

In accordance with the requirements of 1 CFR 51.5, we are finalizing regulatory text that includes the incorporation by reference of Arkansas Pollution Control and Ecology Commission (APC&EC) Rule 19, Chapter 17, adopted January 28, 2022, which is part of the CAA section 111(d) Plan applicable to existing MSW landfills subject to the MSW Landfills Emission Guidelines, at 40 CFR part 60, subpart Cf, within ADEQ's jurisdiction in the State of Arkansas. The regulatory provisions of APC&EC Rule 19, Chapter 17 incorporate the MSW Landfills Emissions Guidelines promulgated by the EPA at 40 CFR part 60, subpart Cf, and establish emission standards and compliance times for the control of municipal solid waste landfills, as defined in subpart Cf, that commenced construction, modification, or reconstruction on or before July 17, 2014. The EPA has made and will continue to make APC&EC Rule 19, Chapter 17, generally available at the EPA Region 6 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). They are also available at: <https://www.regulations.gov>. This incorporation by reference has been approved by the Office of the *Federal Register* and the Plan is federally enforceable under the CAA as of the effective date of this final rulemaking.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a CAA section 111(d) submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7411(d); 42 U.S.C. 7429; 40 CFR part 60, subparts B and Cf; and 40 CFR part 62, subpart A. Thus, in reviewing CAA section 111(d) state plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act and implementing regulations. Accordingly, this action merely approves state

law as meeting Federal requirements and does not impose additional requirements

beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the CAA section 111(d) plan is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: December 21, 2022.

Earthea Nance,
Regional Administrator, Region 6.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 62 as follows:

**PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR
DESIGNATED FACILITIES AND POLLUTANTS**

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart E – Arkansas

2. Amend § 62.850 by adding paragraph (c)(3) to read as follows:

§ 62.850 Identification of plan.

* * * * *

(c) * * *

(3) Municipal solid waste landfills.

3. Add an undesignated center heading and § 62.857 to read as follows:

Emissions From Existing Municipal Solid Waste Landfills

§ 62.857 Identification of plan.

(a) *Identification of plan.* Control of air emissions from existing municipal solid waste landfills, as adopted by the State of Arkansas on January 28, 2022, and submitted on June 20, 2022, by the Governor in a letter dated May 12, 2022. The plan includes the regulatory provisions cited in paragraph (d) of this section, which EPA incorporates by reference.

(b) *Identification of sources.* The plan, as adopted by the State of Arkansas on January 28, 2022, and submitted on June 20, 2022, applies to existing municipal solid waste landfills subject to the Municipal Solid Waste Landfills Emission Guidelines, at 40 CFR part 60, subpart Cf, within its jurisdiction in the State of Arkansas.

(c) *Effective Date.* The effective date of the plan is **[INSERT DATE 30 DAYS AFTER
DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].**

(d) *Incorporation by reference.* The material incorporated by reference in this section was approved by the Director of the *Federal Register* Office in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the material may be inspected or obtained from the EPA Region 6 office, 1201 Elm Street, Suite 500, Dallas, Texas 75270, 214-665-2200. Copies may be inspected at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit:

www.archives.gov/federal-register/cfr/ibr-locations.html, or email:

fr.inspection@nara.gov. The material is available from State of Arkansas, Office of the Secretary of State, Arkansas Register, State Capitol, Room 026, Little Rock, AR 72201, arkansasregister@sos.arkansas.gov, <https://www.sos.arkansas.gov/rules-regulations/arkansas-register/>.

(1) APC&EC Rule No. 19 Chapter 17, Arkansas Pollution Control and Ecology Commission Rule 19, Rules of the Arkansas Plan of Implementation for Air Pollution Control, Chapter 17, 111(d) Requirements for Landfills, adopted January 28, 2022.

(2) [Reserved]